

DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

24615

FILE: B-208921

DATE: April 15, 1983

MATTER OF: Office of CHAMPUS, Department of Defense

DIGEST:

Agency states that prior to its knowledge of our decision in Matter of Bureau of Indian Affairs, 60 Comp. Gen. 181, January 19, 1981, which held that the statutory and regulatory limitations on per diem and actual subsistence rates are applicable to contracts or purchase orders entered into by agencies for lodgings or meals for Government employees, it exceeded the applicable rate limitation on three occasions where it had contracted for lodgings. In view of circumstances described by agency and prior lack of precedent in this area, the Comptroller General will not take exception to the payments made.

This action is in response to a request for an advance decision by the Chief, Finance and Accounting Branch of the Office of Civilian Health and Medical Program of the Uniformed Services, Department of Defense (Office), as to that Office's obligation to collect overpayments made as a result of its having exceeded the applicable limitation for the payment of per diem and actual subsistence expenses when it contracted with commercial establishments for lodgings of Government employees. The lodgings were procured in connection with three different conferences which took place between September 15, and December 2, 1981. The Office advises that the overpayments occurred at a time when it was not aware of our decision of January 19, 1981, in Matter of Bureau of Indian Affairs, 60 Comp. Gen. 181, in which we held that the statutory and regulatory limitations on per diem and actual subsistence expense rates are applicable to contracts or purchase orders entered into by agencies for lodgings or meals for Government employees. Under that decision, expenses incurred by the Government on the employee's behalf under a contract for commercial lodgings, together with the per diem or actual subsistence expenses allowed the employee for meals and incidentals, may not exceed the maximum per diem or actual subsistence expense rate prescribed by statute or regulation.

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The Office has advised that it made payments for lodgings and meals in excess of the applicable rates for per diem and actual subsistence expenses in connection with the three conferences after the date of our decision in 60 Comp. Gen. 181, but before it had received a copy of that decision or had actual knowledge of its holding. The Office states that it made such overpayments because it was not aware of the effect of the cost of lodgings paid under contract on the applicable per diem or actual expense entitlements. The Office has requested that we not require collection of the overpayments concerned, which were made within a year of the date our decision was issued, inasmuch as the payments were made in good faith and without knowledge of that decision.

In our decision in 60 Comp. Gen. 181, we held that because of the lack of precedent in this area, the above stated limitation on the use of appropriated funds for travel expenses would only be applied to travel performed after the date of that decision. Thus, we did not object to payments by the agency concerned, the Bureau of Indian Affairs, to employees and to commercial establishments which were in excess of the applicable per diem or actual subsistence rates. For similar reasons and in view of the circumstances surrounding the overpayments described in the submission, we will not take exception to the payments which have already been made to the employees and commercial establishments concerned. Accordingly, we will not require collection of the overpayments in question.

*for* *J. H. Barclay Jr.*  
Comptroller General  
of the United States